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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 ANTHONY CROSS,

10 Petitioner,

11 vs.

12 RENEE BAKER, et al.,

13 Respondents.
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Case No. 3:14-cv-00434-RCJ-VPC

ORDER

15 Before the court are petitioner's motion to alter or amend judgment and/or motion for
16 reconsideration (#37), respondents' opposition (#38), and petitioner's reply (#39). The court grants
17 petitioner's motion in part.

18 In its previous order (#36), the court granted respondents' motion to dismiss (#18) in part
19 with respect to ground 2 of the petition for a writ of habeas corpus (#4).¹ First, the court found that
20 to the extent that petitioner claimed in ground 2 that a prison disciplinary hearing officer did not
21 determine the reliability, trustworthiness, and integrity of the person who offered evidence against
22 petitioner, the Due Process Clause of the Fourteenth Amendment does not require such findings.
23 Superintendent v. Hill, 472 U.S. 445, 455-56 (1985). Second, the court found that to the extent that
24 ground 2 contained a claim that the Equal Protection Clause of the Fourteenth Amendment was
25 violated, that claim was unexhausted.
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28 ¹Respondents had argued in the motion to dismiss (#18) that ground 1 was unexhausted, but
they withdrew that argument in their reply (#28).

1 In petitioner's opposition to the motion to dismiss (#25), he argued that ground 2 also
2 contained a due-process claim that the hearing officer did not meet the state evidentiary standards of
3 Administrative Regulation 707. The court noted that ground 2 contained no such allegations and did
4 not address the matter further. Petitioner first argues in his motion for reconsideration that ground 2
5 actually does contain an allegation that the prison disciplinary officer violated Administrative
6 Regulation 707. The excerpt of ground 2 that he quotes is conspicuous in its absence of any mention
7 of that regulation, and the rest of ground 2 also does not mention the regulation. The court denies
8 this part of the motion for reconsideration.

9 Petitioner also clarifies the equal-protection claim in ground 2. The court found that
10 petitioner had not presented any equal-protection claim to the Nevada Supreme Court. That remains
11 true. Petitioner argues that the equal-protection claim actually is that the state district court erred in
12 its ruling in his post-conviction state habeas corpus petition and that the Nevada Supreme Court
13 failed to correct the error. "[A] petition alleging errors in the state post-conviction review process is
14 not addressable through habeas corpus proceedings." Franzen v. Brinkman, 877 F.2d 26, 26 (9th
15 Cir. 1989); see also Gerlaugh v. Stewart, 129 F.3d 1027, 1045 (9th Cir. 1997). The court will grant
16 the motion for reconsideration with respect to this claim because, even though the claim is
17 unexhausted, it is without merit. See 28 U.S.C. § 2254(b)(2). Instead of requiring petitioner to elect
18 what to do with this portion of ground 2, the court now will dismiss ground 2 in its entirety.
19 Respondents will need to file an answer to the remaining grounds.

20 IT IS THEREFORE ORDERED that petitioner's motion to alter or amend judgment and/or
21 motion for reconsideration (#37) is **GRANTED** in part. Ground 2 is **DISMISSED** in its entirety.

22 IT IS FURTHER ORDERED that the part of the court's previous order (#36) requiring
23 petitioner to file an election with regard to ground 2 is **VACATED**.

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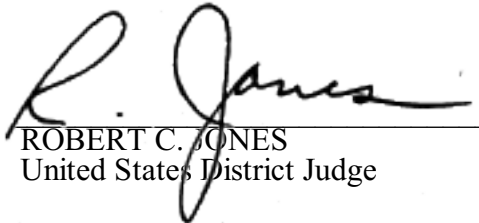
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1 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date
2 of entry of this order to file and serve an answer, which shall comply with Rule 5 of the Rules
3 Governing Section 2254 Cases in the United States District Courts. Petitioner shall have forty-five
4 (45) days from the date on which the answer is served to file a reply.

5 DATED: This 2nd day of December, 2015.

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8 ROBERT C. JONES
9 United States District Judge
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